SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 130

CHRISTINE SNIADACH,

Petitioner,

—v.—

FAMILY FINANCE CORPORATION OF BAY VIEW and MILLER HARRIS INSTRUMENT COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

BRIEF OF CONSUMERS UNION OF UNITED STATES, INC., *AMICUS CURIAE*

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BRIEF OF CONSUMERS UNION OF UNITED STATES, INC., *AMICUS CURIAE*

Interest of *Amicus**

Amicus was chartered in the State of New York in 1936 pursuant to the Membership Corporations Law. It is a non-profit organization which performs tests on consumer products and provides information and advice relating to consumer goods and services. *Amicus* publishes and sells the monthly magazine CONSUMER REPORTS. Its current circulation is approximately 1,500,000.

In addition to testing and reporting services, Consumers Union is concerned with the implementation of the following objectives, which are excerpted from its Certificate

* Written consents by the attorneys for both parties have been filed with the Clerk.

of Incorporation, and digested in the masthead of each issue of CONSUMER REPORTS:

> "To obtain and provide for consumers information and counsel on consumers' goods and services covering quality, price, and labor conditions under which such goods are produced and distributed; to give information and assistance on all matters relating to the expenditure of earnings and the family income; to initiate, to cooperate with, and to aid individual and group efforts of whatever nature and description seeking to create and maintain decent living standards for ultimate consumers . . ."

Amicus has published numerous articles and comments which bear upon the issues in this case. *Amicus* has frequently published material concerning consumer credit problems throughout the United States; and, in particular, the problems of wage garnishment and the low-income consumer. Recently, the August 1968 issue of CONSUMER REPORTS contained an article entitled "The Truth About Credit Is Coming", which discusses the newly enacted Consumer Credit Protection Act, which becomes effective July 1, 1969, and, specifically, wage garnishment.

Amicus files this brief because it believes that this case presents important questions of law and policy affecting directly the rights of the consumer, especially the poor consumer, to equal protection of the laws and to due process of law. This country has experienced a veritable economic revolution in credit practices affecting the poor and low-income wage earners. Millions of such consumers, seduced by a combination of the hard sell of consumer goods and promises of easy credit, are now burdened with extensive debts, often beyond their economic capacity. Existing laws, previously appropriate to resolve legal

disputes between commercial equals, have assumed the dimensions of weapons of oppression by creditors against desperate debtors, including debtors who have defenses or counterclaims arising out of shoddy merchandise or shady credit practices.

Such a law is Wisconsin's prejudgment garnishment statute, which traps an already disadvantaged consumer into a position where, prior to adjudication of any debt, he is so financially strangled that he must pay the amount demanded by the creditor and eschew use of the court for his defense or counterclaims.

The extent to which our laws can provide justice for an enormous and expanding number of disadvantaged consumers has been a question which has preoccupied not only jurists, but the leaders of our cities and nation as well. If constitutional guarantees of equal protection and due process can effectively protect the few dollars of small wage earners from premature detention by creditors who have not established their claims, then one more roadblock to justice for the poor will have been eliminated.

ARGUMENT

POINT I

Pre-judgment wage garnishment is part of a network of oppressive credit practices which prey on the poor consumer.

"The law and the courts have failed the inner-city poor" in myriad respects, according to United States Court of Appeals Judge J. Skelly Wright. Wage garnishment is one of the most grievous of its failures.[1] Indeed, it has been termed a process tantamount to a modern debtor's jail.

The process of pre-judgment garnishment of wages in Wisconsin[2] bears ugly witness that often:

> "right . . . is only in question for equals in power; the strong do what they can, and the weak suffer what they must."[3]

But, if there has been one principle which has guided this Court in recent years, it is the proposition that Thucyd-

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[1] Wright, "The Courts Have Failed the Poor," The New York Times Magazine, March 9, 1969, p. 26.

[2] Wisconsin's pre-judgment garnishment law permits a creditor to garnish an alleged debtor's wages by filing an attorney's affidavit with the court clerk alleging that a summons has been issued against the alleged debtor. The clerk thereupon issues the garnishment order. No notice of the garnishment is given the alleged debtor. The alleged debtor has no opportunity to contest the existence of the alleged debt or to test the propriety of the garnishment itself until the main action is tried. See Wisc. Stats. Ann. §§ 267.01 *et seq.*

[3] Thucydides, *History of the Peloponnesian War,* V, 84 ff. The phrase has also been translated:

> "Justice is attained only when both sides are equal. The powerful exact what they can and the weak yield what they must." Hamilton, *The Greek Way* 181 (Time Inc. Ed. 1963).

ides was wrong, and that "equal justice under law" means something better than Anatole France's bitter observation.[4] To that end this Court has striven to give meaning to the concept that all men, regardless of race or economic status, are equal before the law. See, e.g., Fortas, "Equal Rights—For Whom?" 42 N.Y.U. L. Rev. 401 (1967).

Nowhere has the effort of this Court to prevent law from becoming a machine for condemning the poor to "suffer what they must" been more spectacular than in the assault upon the inequities which traditionally have been visited upon indigent criminal defendants.[5] In a series of historic decisions, this Court has consistently attempted to provide the poor with equal access to criminal justice. See, e.g., *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *California,* 372 U.S. 353 (1963); *Lane* v. *Brown,* 372 U.S. 477 (1963); *Draper* v. *Washington,* 372 U.S. 487 (1963); *Lynumn* v. *Illinois,* 372 U.S. 528 (1963); *Bush* v. *Texas,* 372 U.S. 586 (1963); *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

But the search for equal justice under law cannot stop at the criminal courthouse door. As Mr. Justice Douglas wrote, dissenting from the denial of certiorari in *Williams* v. *Shaffer,* 385 U.S. 1037 (1967):

> "We have recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of a person's purse. It is true that these cases have dealt with criminal proceedings. But the Equal Protection Clause of the Fourteenth

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[4] ". . . the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." John Cournos, *A Modern Plutarch,* p. 27.

[5] See, generally, Stephen, *Variations in the Punishment of Crime,* 17 The Nineteenth Century, 755, 756 (1885).

> Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters." 385 U.S. at 1039.*

Millions of Americans are confronted, in a civil context, with legal rules and procedures which deny them the basic elements of due process of law and of the equal protection of the laws and, thereby, pervert the process of law from a search for justice into an exercise of power.

Amicus, as an organization concerned with consumer problems, has on many occasions written concerning, and spoken in behalf of, the poor and low income consumer. It has warned of the disastrous social and economic consequences of America's consumer credit orgy.

> "Here is a social and moral problem of perhaps more significance than the economic hazards attending consumer credit. What is called for is not such a passing concern as the stock market decline provided, but a serious and careful investigation at the highest Federal level into the human as well as the financial, the ethical as well as the economic, aspects of this credit game in which the cards are so heavily stacked by the strong against the weak, by the cunning against the trusting."
>
> "Bait the Hook with Merchandise", 30 CONSUMER REPORTS, 461 (September 1965).

This problem has been described by *amicus*:

> "No amount of information will be enough to help millions of consumers escape the toils of endless debt

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* The Chief Justice concurred in Mr. Justice Douglas' opinion, and Mr. Justice Brennan was also of the opinion that certiorari should be granted. This Court granted certiorari in *Simmons* v. *Housing Authority of West Haven*, No. 909, on April 7, 1969. In both *Williams* v. *Shaffer* and *Simmons* v. *Housing Authority*, the petitioners challenged constitutionality of a procedure which requires an evicted tenant to post a bond prior to contesting the legality of the eviction.

> and the total impoverishment, harassment by creditors, despair, disgrace and personal bankruptcy attending it. Most of those consumers are counted among the poor and uneducated. They are preyed upon by a certain class of credit merchants who beckon day and night from their slum stores with television sets, furniture, clothing and jewelry on easy terms of only a few dollars a week. Slum credit-merchants make at least 90 per cent of their sales on the installment plan, a Federal Trade Commission survey in Washington, D.C., shows. The prices they charge, well concealed in their 'easy payments,' are often exorbitant. A television set generally available for $129.95 sold in a low-income Washington neighborhood for $219.95. A dryer selling elsewhere for $150 was bringing $300 in the poor neighborhood." "The Truth About Credit Is Coming," 33 CONSUMER REPORTS 428, 430 (August 1968).

The role of law and the courts in this bleak overview, as "oppressive rather than redemptive" has been graphically described by Judge Wright:

> "The lawsuits in which people lose their cars, their furniture and their money and have deficiency judgments taken against them are not likely to come to trial. The overwhelming majority of merchant-initiated suits—97 per cent in the case of Harlem merchants—end in a default judgment for the plaintiff because the defendant never appears or answers the summons or complaint."

Wright, "The Courts Have Failed the Poor", New York Times Magazine, March 9, 1969, pp. 26, 104.

Against such a backdrop, pre-judgment garnishment can be seen in appropriate perspective:

> "The process of wage garnishment has been termed 'a modern parallel to debtors' prison.' And it is, in

many ways, not only as iniquitous, but also as ridiculous and self-defeating as the debtors' prisons were. The employe whose salary is being garnisheed is not simply going to be taking home less money; he is also likely to find himself without a job. This is because employers find the procedure of withholding employes' wages such a bother that many simply fire the employes. Just as the debtor in prison is not going to be able to pay his debts, neither will the unemployed indigent subject to garnishment be able to get and hold a job. Unless he can discharge his debts in bankruptcy—and for a number of reasons this may be impossible—his salary will again be garnisheed if he finds other employment. Again the oppressive pattern of joblessness and relief." (*Id.* at 106).

Judge Wright calls for a ban on pre-judgment garnishment. Consumers Union did so in March 1966. "Are Changes Coming in Those One-Sided Credit Laws?" 31 CONSUMER REPORTS 112.

This Court has forged the way in defining racial due process and criminal due process. The same principles which propelled those historic steps towards equal justice under law underscore the present need for a new definition of due process for low-income consumers as well.[7] See *Report of the President's Advisory Commission on Civil Disorders* (Kerner Commission) 292 (Bantam Ed. 1968). It is respectfully submitted that this Court could find no more fitting starting point than by consigning Wisconsin's prejudgment wage garnishment procedure to a deserved oblivion.

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[7] "The point is simply that a law may be consistently and evenly applied, yet systematically work a hardship on a particular class. In our society, the law has worked a hardship on those least able to withstand it." Wright, "The Courts Have Failed the Poor", *supra* at 26.

POINT II

Wisconsin's pre-judgment wage garnishment procedure violates the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

A. *Pre-Judgment Wage Garnishment Violates the Equal Protection Clause*

1. The historical function of pre-judgment garnishment and its present anachronistic status

The historical function of pre-judgment garnishment[8] —as a species of pre-judgment attachment—was the creation of *quasi in rem* jurisdiction over nonresident defendants who could not otherwise be brought within the jurisdiction of the court. Pre-judgment garnishment appeared for the first time in the customs of the medieval borough courts of England. It permitted an English merchant who wished to sue a nonresident defendant (who was usually a foreign merchant) to attach the defendant's property situated within the borough court's jurisdiction and literally hold it for ransom to compel the foreign merchant to appear personally. 2 Holdsworth, *A History of English Law* 387 (3d Ed. 1923); Morris, *Select Cases of the Mayor's Court of New York City 1674-1784*, Introduction, 14 (1935); *Bowser* v. *Collins*, Y.B. (1483), 22 Edw. 4, 30 (Norman-French original), reprinted in translation 2 Drake, *Suits by Attachment* 699 (2d Ed. 1858).

The practice of utilizing pre-judgment attachment and garnishment as a convenient device to create extra-territorial jurisdiction was soon transplanted to the American colonies. See, generally, Mussman and Riesenfeld, *Garnish-*

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[8] The term "garnishment" is used interchangeably herein with attachment to connote the placing of a judicial lien upon property.

ment and Bankruptcy, 27 Minn. L. Rev. 1 (1942). As the nation developed a complex web of inter-state commercial relationships, the existence of a multiplicity of limited state jurisdictions made the use of pre-judgment garnishment a commercial necessity in order to obtain *quasi in rem* jurisdiction over foreign defendants. Cf. *Pennoyer* v. *Neff*, 95 U.S. 714 (1877).

It is not surprising, therefore, that pre-judgment garnishment became a customary and accepted mode of initiating commercial litigation against foreign defendants over whom no *in personam* jurisdiction could be secured. *Ownbey* v. *Morgan*, 256 U.S. 94 (1921). *Ownbey* is a classic example of the historical function of pre-judgment garnishment. In *Ownbey*, the plaintiff resided in Delaware and was unable to establish *in personam* jurisdiction over a Colorado defendant. However, the defendant owned property in Delaware. Plaintiff, alleging that the defendant was indebted to him, attached defendant's Delaware assets, thereby creating *quasi in rem* jurisdiction over him.[9]

In spite of the efficacy of the *Ownbey* procedure in establishing *quasi in rem* jurisdiction, the continued growth of a national commercial structure, coupled with the astonishing mobility of twentieth century American life, rendered pre-judgment garnishment inadequate as a device to assure a plaintiff's access to a convenient judicial forum. In response to the need for a more appropriate

[9] In *Ownbey*, when the Colorado defendant sought to appear and defend the action *in personam*, he was barred from doing so until security for the attached assets was filed with the court. Since Ownbey lacked the funds to obtain such security, he was not permitted to defend the action. To the extent to which the *Ownbey* decision sustains the constitutionality of depriving a defendant of his day in court because he lacks the funds to post security, it is wholly inconsistent with modern notions of due process of law and equal protection of the laws, and should be repudiated. See *infra* pp. 12-17.

and efficient procedure for obtaining jurisdiction over out of state defendants,[10] there evolved the "long arm statute", authorizing a state court to assert *in personam* jurisdiction over foreign defendants in cases arising out of transactions occurring within the forum state. See, generally, *Developments in the Law State-Court Jurisdiction*, 73 Harv. L. Rev. 909 (1960); Carrington, *The Modern Utility of Quasi-in-Rem Jurisdiction*, 76 Harv. L. Rev. 303 (1962).[11] Had such a "long arm statute" existed at the time, the Delaware court in *Ownbey* would have possessed *in personam* jurisdiction without resort to pre-judgment garnishment.

What began, therefore, in the English borough courts of the Fifteenth century as a judicial device for acquiring extra-territorial jurisdiction, has evolved, under the pressures of life in contemporary American society, into an explicit legislative assertion of such jurisdiction. To the extent that the legislature has solved the jurisdictional dilemma by creating constitutionally-sufficient long arm jurisdiction, the original concept of pre-judgment garnishment has been reduced to a vestigial anachronism.[12]

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[10] As evidenced by this Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

[11] See, Cleary and Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 N.W. L. Rev. 599, 603 (1955) for a review of the events leading up to the enactment of the first "long arm statute" by Illinois. Wisconsin's "long arm statute" was enacted on July 1, 1960. W.S.A. § 262.05; § 262.06. See, Note, *Personal Jurisdiction Over Non-Residents*, 1962 Wisc. L. Rev. 544 (1962) for an analysis of Wisconsin's statute. The history and development of Wisconsin's statute, together with a partial compilation of the long arm provisions of other states, is set forth in the Revision Notes to Wisc. Stat. Ann. § 262.05.

[12] Of course, if a plaintiff, in good faith, establishes that a defendant is likely to abscond during the pendency of an action, pre-judgment garnishment would, once again, play its historical role of compelling debtors to appear in court.

2. The current oppressive function of pre-judgment wage garnishment effects a denial of equal access to the courts

Since a wage earner, especially a poor wage earner, often depends upon his wages for subsistence, intolerable pressures to pay or to settle a disputed claim prior to any judicial hearing are brought to bear upon him by delaying the receipt of his wages. In addition, many wage earners fear, quite justifiably, that their jobs will be jeopardized if their employers are put to the inconvenience and expense of complying with a pre-judgment wage garnishment. Brunn, *Wage Garnishment in California,* 53 Calif. L. Rev. 1214, 1229 (1965).

Pre-judgment garnishment originated as a device to compel recalcitrant debtors to resolve their disputes in court. In modern America, however, pre-judgment wage garnishment has degenerated into a device which frustrates debtors from presenting their defenses in court. In fact, pre-judgment wage garnishment, which originated as a device to give a creditor his day in court, is now utilized as a club to coerce a poor debtor into abandoning his day in court. Patterson, *Wage Garnishment—an Extraordinary Remedy Run Amuck,* 43 Wash. L. Rev. 735 (1968); Jabonski, *Wage Garnishment as a Collection Device,* 1967 Wisc. L. Rev. 759 (1967); Comment, *Wage Garnishment in Washington—an Empirical Study,* 43 Wash. L. Rev. 742 (1968).

In effect, the existence of pre-judgment wage garnishment puts a price tag on resort to the courts. If an alleged debtor is sufficiently wealthy to afford the suspension of a portion of his wages or to risk the loss of his job, he can face his creditor with relative impunity, and resolve his dispute in court. If, however, he is dependent upon his wages for the necessities of life or views the potential loss of his job as an economic catastrophe, he

is literally at a creditor's mercy; for unless he pays up or settles, without resort to court, a substantial portion of his wages may be cut off and his livelihood imperiled.

Pre-judgment wage garnishment, therefore, stands as a pervasive restraint upon the ability of the poor to gain access to the courts. As such, it denies them equal protection of the law.

This Court has repeatedly declared that the existence of procedures which invidiously discriminate against the poor, by creating a "money hurdle" [18] which they must overcome in order to gain access to their birthright as Americans, violates the equal protection clause of the Fourteenth Amendment.

In *Edwards* v. *California*, 314 U.S. 160 (1941), this Court struck down a statute making it a crime to introduce an indigent into the State of California. Mr. Justice Douglas, in his concurring opinion, stated that the existence of such a restraint upon the right of the poor to travel freely:

> "... would ... introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity." 314 U.S. at 181.

Mr. Justice Jackson, in his concurring opinion in *Edwards*, added:

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[18] *Griffin* v. *Illinois*, 351 U.S. 12 (1956), Frankfurter, J., concurring at p. 23.

"We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States." 314 U.S. at 184.

In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), this Court struck down a procedure whereby indigent defendants were prevented from appealing from criminal convictions by being denied free transcripts of their trials. Mr. Justice Black, writing for the Court, stated:

"Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. . . .

* * * * *

". . . our own constitutional guarantees of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons.

* * * * *

"Surely no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court." 351 U.S. at 16-17.

Mr. Justice Frankfurter, in his concurring opinion in *Griffin*, added:

". . . when a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons . . . from securing such review. . . .

"To sanction such a ruthless consequence, inevitably resulting from a money hurdle erected by a State, would justify a latter-day Anatole France to add one more item to his ironic comments on the 'majestic equality' of the law. . . .

> "The State is not free to produce such a squalid discrimination. If it has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity." 351 U.S. at 23-24.

Again, in *Burns* v. *Ohio,* 360 U.S. 252 (1959), this Court struck down a procedure which prevented an indigent defendant from perfecting his appeal until he paid a $20 filing fee. The Chief Justice, writing for the Court, held:

> "The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." 360 U.S. at 258.

Accord: Smith v. *Bennett,* 365 U.S. 708 (1961), involving a $4 filing fee for a habeas corpus petition ("In failing to extend the privilege of the Great Writ to its indigent prisoners, Iowa denies them equal protection of the laws." 365 U.S. at 714).

And in *Douglas* v. *California,* 372 U.S. 353 (1963), this Court struck down a procedure whereby appellate counsel for indigent prisoners was provided only for "meritorious appeals." Mr. Justice Douglas, writing for the Court, stated:

> "There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record . . . while the indigent . . . is forced to shift for himself." 372 U.S. at 357-358.

See also, *Anders* v. *California,* 386 U.S. 738 (1967).

In *Gideon* v. *Wainwright,* 372 U.S. 335 (1963), this Court reversed prior contrary precedents and ruled that an in-

digent defendant in a non-capital felony case was constitutionally entitled to court appointed counsel:

> "... in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." 372 U.S. at 344.

Finally, in *Roberts* v. *LaVallee,* 389 U.S. 40 (1967), this Court, in condemning *per curiam* New York's refusal to provide an indigent defendant with a copy of the transcript of his preliminary hearing, summed up the present state of the constitutional right of equal access to the courts:

> "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." 389 U.S. at 42.[14]

The principle of equal justice for the poor enunciated by this Court in these cases would clearly invalidate any state attempt to condition access to the courts upon "the length of a person's purse." *Williams* v. *Shaffer,* 385 U.S. 1037, 1039 (1967) (Dissenting Opinion). *Simmons* v. *Housing Authority of West Haven,* No. 909 (certiorari granted April 7, 1969). Paraphrasing Mr. Justice Black in *Griffin* v. *Illinois,* 351 U.S. at 16-17, "surely no one would contend" that a state or the Federal Government could constitutionally provide that indigent persons unable to satisfy a means test should be denied the right to resort to courts for the resolution of consumer disputes.

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[14] The Equal Protection Clause guarantees not only equal access to the courts, but also equal access to the electoral system. *Harper* v. *Virginia Board of Electors,* 383 U.S. 663 (1966). *Harper* invalidated state poll taxes because such a tax "makes the affluence of any voter or payment of any fee an electoral standard." 383 U.S. at 666.

Pre-judgment wage garnishment creates just such a means test. It stands as a formidable "money hurdle" between the poor and access to the courts. It requires no Anatole France[15] to recognize that the invidious discrimination against the poor inherent in pre-judgment wage garnishment can no longer be tolerated in an American society which pays more than lip service to equal protection of the laws.[16]

B. *Pre-Judgment Wage Garnishment Violates the Due Process Clause*

Amicus contends that contemporary pre-judgment wage garnishment must be recognized as a violation of the Equal Protection Clause. See *supra*, pp. 12-17. Pre-judgment wage garnishment is even more plainly a violation of the Due Process Clause.

It is beyond doubt that "No person may be deprived of his property without notice or hearing." *Mullane* v. *Central Hanover Bank and Trust Company*, 339 U.S. 306 (1950).

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[15] The cases relied upon by the Court below, all more than 40 years old, relate to a completely different world than that of the persons affected by contemporary wage garnishment. *Ownbey* v. *Morgan*, 256 U.S. 94, 111 (1921) majestically observes that "a man who has property usually has friends and credit." *Coffin Brothers* v. *Bennett*, 277 U.S. 29 (1928) dealt with owners of bank stock. *McInnes* v. *McKay*, 279 U.S. 820 (1928) is bereft of a full statement of facts, but it is hard to believe that the case involved low-income debtors whose weekly wages were garnisheed.

[16] "That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society, and no considerable property rights have become vested in reliance upon the old rule." Wheeler, *J.* in *Dwy* v. *Connecticut Co.*, 89 Conn. 74, 99 (1915), quoted with approval in Cardozo, *The Nature of the Judicial Process*, 151 (Yale Paperbound ed. 1960).

Mr. Justice Jackson, writing for the Court in *Mullane,* stated:

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." 339 U.S. at 313.

It is conceded that neither notice nor hearing is required by statute before the imposition of pre-judgment wage garnishment in Wisconsin. It is contended, however, that since the sequestration of wages is only temporary, because "title" does not pass, the garnishment is not really a deprivation of property. *Family Finance Corp.* v. *Sniadach, supra,* 154 N. W. 2d at 262-263. In effect, the Wisconsin Supreme Court ruled that the indefinite suspension of fifty per cent of a week's wages would not constitute a taking of property because no "title" passed.

There might have been a time in the history of this Court when the empty conceptualism inherent in such thinking would have outweighed objective reality. Fortunately, those days are gone. This Court has determined that reality, not formalistic concept, is the touchstone of constitutional decision. As Mr. Justice Frankfurter stated, concurring in *Griffin,* "[l]aw addresses itself to actualities." 351 U.S. at 23.

The stark, unalterable "actuality" of pre-judgment wage garnishment is that it deprives a wage earner of the wherewithal to secure the necessities of life without notice or hearing. The overwhelming mass of persons who endure pre-judgment wage garnishment are low-income consum-

ers. They require every penny earned, and more, to pay for basic necessities. They have no savings to rely upon. Pre-judgment wage garnishment not only works an economic hardship upon a wage earner and his family, but it may also intensify other family debt problems, leading in an inexorable spiral to repossession, default judgment and bankruptcy. Brunn, *Wage Garnishment in California*, 53 Cal. L. Rev. 1214, 1228 (1965); "The Truth About Credit", 33 CONSUMER REPORTS, 428, 430 (August 1968).

It is this "actuality", *amicus* respectfully urges, on which this Court must rule. The fact that under Wisconsin law "title" to the garnisheed wages has not passed does not, in any way, mitigate the nature of the deprivation which pre-judgment wage garnishment perpetrates upon a low-income wage earner. All the "title" in Wisconsin will not buy a week's groceries.

CONCLUSION

For the reasons set forth, the decision of the Court below should be reversed.

Respectfully submitted,

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